

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0325
Underground Storage Tank Fee
For The Tax Periods: 1995, 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Underground Storage Tank Fees – Imposition

Authority: IC § 6-8.1-1-1, IC § 6-8.1-1-6, IC § 13-23-12-1.

Taxpayer protests the assessment of the underground storage tank owner registration fee.

II. Underground Storage Tank Fees – Penalty

Authority: IC § 13-23-14-3, IC § 13-22-12-7, IC § 6-8.1-10-2.1.

Taxpayer protests the assessment of penalties.

STATEMENT OF FACTS

Taxpayer was assessed underground storage tank fees and penalties for the periods of 1988 through 2001. Taxpayer inherited the property where the tanks were located after his father passed away on October 26, 1996. The tanks were removed as of September 5, 2000. More facts will be provided as necessary.

I. Underground Storage Tank Fees – Imposition

DISCUSSION

The underground storage tank fee is administered by the Indiana Department of Revenue per IC § 6-8.1-1-6 which states in relevant part: "The provisions of this article apply for the purposes of imposing, collecting, and administering the listed taxes." The fee is based on IC §13-23-12-1 and constitutes a listed tax by inclusion in the definition of "Listed taxes" at IC § 6-8.1-1-1.

IC 13-23-12-1 states:

- (a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:
 - (1) rules adopted under IC 13-23-1-2; or

- (2) a requirement imposed by the commissioner before the adoption of rules under IC 13-23-1-2;
shall pay to the department of state revenue an annual registration fee.
- (b) The annual registration fee required by this section is as follows:
 - (1) Ninety dollars (\$90) for each underground petroleum storage tank.
 - (2) Two hundred forty-five dollars (\$245) for each underground storage tank containing regulated substances other than petroleum.
- (c) If an underground storage tank consists of a combination of tanks, a separate fee shall be paid for each tank.

Taxpayer states that he did not own the property where the tanks were situated until August 1997 and has provided the deed to demonstrate this fact. Taxpayer inherited the property. Consequently, Taxpayer is not liable for fees prior to his ownership of the property.

FINDING

The Taxpayer's protest is sustained in part and denied in part. Taxpayer is not liable to any fees due prior to August 1997. However, Taxpayer is liable for fees subsequent to the aforementioned date to their removal on September 5, 2000.

II. Underground Storage Tank Fees – Penalty

Taxpayer protests the penalties included in the assessments. The notices sent by the Department (Form UST-1) to Taxpayer, listed two separate penalties titled "Late" which was ten (10%) of each annual amount assessed and an "Environmental" penalty of six thousand dollars (\$6,000) for each assessment.

With regards to the penalties labeled "Environmental", Taxpayer contends that he is not subject to a civil penalty because he was not the owner of the property when the violation first occurred. Pursuant to IC 13-23-14-3:

- (a) Except as provided in subsection (b), a person who violates:
 - (1) a requirement or standard set forth in this article; or
 - (2) a rule adopted under IC 13-23-1-2 other than a violation described in section 2 of this chapter;is subject to a civil penalty of not more than ten thousand dollars (\$100,000) per underground storage tank for each day of violation.
- (b) A person is not subject to the civil penalty described in subsection (a) if:
 - (1) the violation arose from an underground storage tank that is on a brownfield;
 - (2) *the person was not the owner or operator of the underground storage tank when the violation first occurred; (emphasis added)*
 - (3) the person does not dispense a regulated substance into or from the underground tank:
 - (A) for any purpose other than temporary or permanent closure; or
 - (B) in violation of any federal, state, or local regulations; and
 - (4) the underground storage tank is brought into compliance with this article not later than one (1) year after the person acquired ownership of the property.

While Taxpayer is correct that a person not an owner when the violation first occurred is not subject to a civil penalty, it seems more likely that the penalty in question was added for nonpayment of fees. Taxpayer owned three tanks. IC 13-22-12-7 states:

Penalties for nonpayment of fees

- (a) An owner of an underground storage tank who:
 - (1) is required to pay the fee under section 1 of this chapter; and
 - (2) fails to pay the fee when due as established under section 2 of this chapter; shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid.
- ...
- (d) The penalty set forth in this section is in addition to the penalties that may be imposed under the following:
 - (1) IC 13-23-14-2
 - (2) IC 13-23-14-3
 - (3) IC 13-23-14-4
 - (4) IC 13-30-4
 - (5) IC 13-30-5
 - (6) IC 13-30-6
 - (7) IC 13-30-8

Taxpayer argues that if the “Environmental Penalty” is a penalty for the non-payment of fees, it is inappropriate to disguise the true nature of the penalty by labeling “Environmental” and leading one to conclude it is a civil penalty.

Additionally, a ten percent (10%) “Late penalty” is included in the assessments. A ten percent (10%) penalty may be imposed if a person fails to pay or file a timely return of a listed tax. IC 6-8.1-10-2.1. Pursuant to IC 13-22-12-7(d), the assessment of penalties for nonpayment of underground storage tank fees is inconsistent with the Department’s assessment in this area. Consequently, Taxpayer’s protest is denied as to the penalty for the non-payment of fees. However, Taxpayer’s protest of the ten percent (10%) late fee is sustained.

FINDING

Taxpayer’s protest is sustained in part and denied in part. Taxpayer’s protest of the ten percent (10%) late fee is sustained. However, Taxpayer’s protest is denied as to the penalty for the non-payment of fees.